

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (DAYTON)

PLAYTEX PRODUCTS, INC.,	:	CASE NO. C-1-02-391
Plaintiff,	:	(Judge Thomas M. Rose)
v.	:	
THE PROCTER & GAMBLE	:	MOTION OF DEFENDANTS FOR
DISTRIBUTING COMPANY, <u>et al.</u> ,	:	LEAVE TO FILE DEFENDANTS'
Defendants.	:	SUPPLEMENTAL MEMORANDUM
	:	ON PLAINTIFF'S RECENT
	:	DISCLOSURE RELEVANT TO
	:	DEFENDANTS' MOTION TO
	:	DISMISS WITHOUT PREJUDICE
	:	DEFENDANTS' SECOND
	:	COUNTERCLAIM AND PLAINTIFF'S
	:	COUNTER-COUNTERCLAIMS
	:	REGARDING THE CAMPION
	:	<u>PATENTS</u>

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Pursuant to S.D. Ohio Civ. R. 7.2(a)(2), Defendants move for leave to file a supplemental memorandum in support of their Motion to Dismiss Without Prejudice Defendants' Second Counterclaim and Plaintiff's Counter-Counterclaims Regarding the Campion Patents, in order to supply this Court with facts regarding a recent development bearing on that motion.

Respectfully submitted,

s/Donald E. Burton

Charles J. Faruki (0010417)

Trial Attorney

Thomas R. Kraemer (0060120)

Donald E. Burton (0040553)

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**MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANTS FOR  
LEAVE TO FILE DEFENDANTS' SUPPLEMENTAL MEMORANDUM  
ON PLAINTIFF'S RECENT DISCLOSURE RELEVANT TO DEFENDANTS'  
MOTION TO DISMISS WITHOUT PREJUDICE DEFENDANTS' SECOND  
COUNTERCLAIM AND PLAINTIFF'S COUNTER-COUNTERCLAIMS  
REGARDING THE CAMPION PATENTS**

Defendants wish to file a short (4 pages) supplemental memorandum regarding a new product offering of Playtex (announced on October 27, 2003), the existence of which supports the grounds for P&G's motion to dismiss its "Campion" counterclaim without prejudice rather than with prejudice.

Respectfully submitted,

s/Donald E. Burton  
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**CERTIFICATE OF SERVICE**

I certify that on November 18, 2003, I electronically filed the Motion of Defendants for Leave to File Defendants' Supplemental Memorandum on Plaintiff's Recent Disclosure Relevant to Defendants' Motion to Dismiss Without Prejudice Defendants' Second Counterclaim and Plaintiff's Counter-Counterclaims Regarding the Campion Patents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

James B. Helmer  
Paul B. Martins  
HELMER, MARTINS & MORGAN CO., L.P.A.  
Fourth & Walnut Centre  
Suite 1900  
105 East Fourth Street  
Cincinnati, OH 45202

Attorneys for Plaintiff  
Playtex Products, Inc.

and I certify that this document has been served via Federal Express upon the following non-CM/ECF participants this 18th day of November, 2003:

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s/ Donald E. Burton  
Donald E. Burton

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